36th Annual Workforce Management Briefing

Managing Workforce Compliance in an Unpredictable World

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Global Executive Compensation Plans, Programs, and Policies: Issues and Challenges for the Financial Industry

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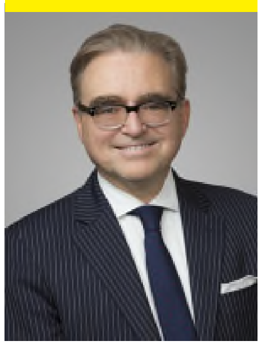

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Today's Agenda

- Overview of Compensation Programs in the Global Financial Services Industry
- Global Equity Plan Compliance Matters
- Key Executive Compensation Considerations for U.S. and Swiss Issuers
- Current Executive Compensation Regulatory Landscape
- Status of Dodd-Frank and Other New and Proposed Legislation

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Overview of Compensation Programs in the Global Financial Services Industry

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Credit Suisse

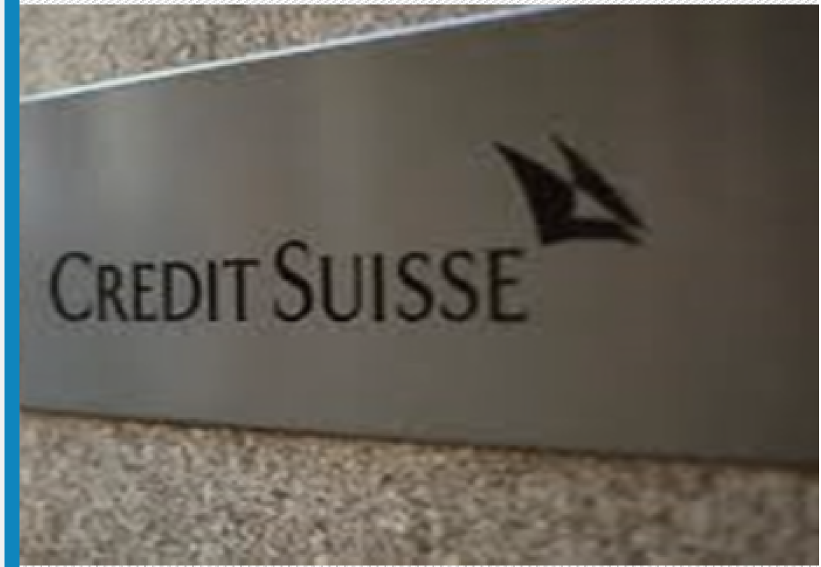
Headquartered in Zurich, Switzerland

Primary stock exchange—SIX Swiss Exchange but also listed on NYSE (“CS”)

Approx. 50,000 FT employees in 50+ countries

Key divisions:

- Swiss Universal Bank
- International Wealth Management
- Asia Pacific
- Global Markets
- Investment Banking & Capital Markets



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Credit Suisse’s Executive Compensation Program

- Aside from base salary and retirement benefits, key pay elements for ExB members, include:
  - Short-Term Incentives: Formulaic, 50% deferred until three-year anniversary
  - Long-Term Incentives:
    - LTIP Awards—Performance Share Units, earned based on performance of metrics during three-year performance period
      - Metrics include relative TSR, CET1 ratio, CET1 leverage ratio, cost target, and, in some instances, divisional metrics
- Non-ExB Members: Deferred portion of annual discretionary bonus consists of phantom shares, performance shares, and/or contingent capital awards
- Recent changes to the program?

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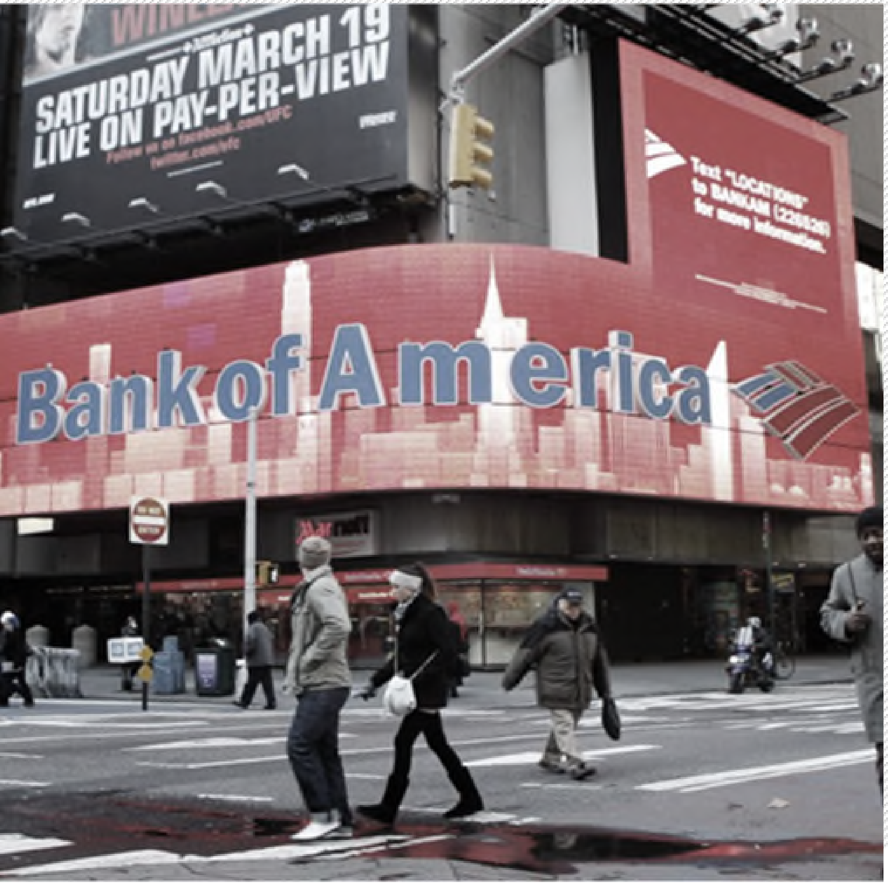
Bank of America



Headquartered in Charlotte, North Carolina

Primary stock exchange—NYSE (“BAC”)

Approx. 209,000 FT employees in 40 countries

Key divisions:

- Consumer Banking
- Global Wealth & Investment Management
- Global Banking
- Global Markets

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Bank of America's Executive Compensation Program

- Aside from base salary and retirement benefits, key pay elements for senior management include:
  - Short-Term Incentives:
    - Generally non-formulaic
    - Paid as cash-settled restricted stock units (RSUs) vesting monthly over 12 months for CEO
    - Cash for other executive officers
  - Long-Term Incentives: Bank of America Key Employee Equity Plan
    - Performance-based RSUs—three-year performance period; 50% based on average return of asset targets and 50% based on average adjusted tangible book value growth
    - Time-based RSUs—three years with graded vesting
    - Cash-settled RSUs (CEO only)
  - Retention Policy / Deferred Compensation
- Recent changes to the program?

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Global Equity Plan Compliance Matters

Global Equity Plan Compliance Issues

- Incentive plans involve many areas of law, as well as tax and accounting considerations, which vary by jurisdiction
  - Securities Law: Are there any filings, registration requirements, disclosure requirements?
  - Taxation:
    - Is the “tax trigger” upon grant, vesting, or settlement of the award?
    - Are there any employer tax withholding or reporting obligations?
    - Are there any obstacles to obtaining a corporate deduction for awards at the parent or subsidiary level?
  - Accounting: How are the awards expensed for accounting purposes?
  - Employment Law: Will the awards affect the employment relationship in any manner?
  - Regulatory Issues: Are there any remuneration regulations or other requirements that must be complied with?
- Process in which global equity plans are reviewed to ensure compliance

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Key Executive Compensation Considerations for U.S. and Swiss Issuers

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Key Executive Compensation Considerations for U.S. Public Issuers

- Proxy Statement Preparation Best Practices
- New Required and Suggested Disclosures
- “Say on Pay” Trends

Key Executive Compensation Considerations for U.S. Public Issuers—Proxy Statement Preparation

- Review updates to voting policies of top shareholders and proxy advisors
- Shareholder engagement and discussions with proxy advisors
- Prepare proxy statement in "user friendly" format
  - Executive summaries in compensation discussion and analysis (CD&A) and use of graphics
  - Many institutional shareholders will not read the whole proxy statement
    - Disclosure of performance measures and "pay for performance" alignment considered as the most important subject matters
- Highlight "good governance" practices
- Follow through on commitments made to shareholders, proxy advisors, or those previously disclosed

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Key Executive Compensation Considerations for U.S. Public Issuers—New Disclosures

- CEO Pay Ratio Disclosure Final Rule
  - Registrants must comply with the final rule for the first fiscal year, beginning after January 1, 2017 (reported in 2018 proxy statement)
- Companies will be required to disclose:
  - Median of the annual total compensation of all employees, except the CEO
  - Annual total compensation of the CEO
  - Ratio of these two amounts
- Information companies are required to collect for compliance can be extensive, and a collaboration of internal functions (e.g., HR, GC, accounting) may be required
- Other disclosures: environmental, social, and governance initiatives

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Key Executive Compensation Considerations for U.S. Public Issuers—"Say on Pay" Voting Trends

- As of August 2, 2017—2,114 Russell 3000 companies have held "say on pay" votes*
  - 30 companies (1.4%) have failed "say on pay" votes
  - 76% have passed with over 90% approval, and average vote result is 91%
  - Institutional Shareholder Services (ISS) has recommended a vote "against" at 12% of companies it has reviewed
- Shareholder support is approx. 26% lower at companies that have received an ISS "against" recommendation
  - Average approval with ISS "for" recommendation is 95%
  - Average approval with ISS "against" recommendation is 69%

*Data obtained from Semler Brossy's August 2, 2017, Say on Pay Report

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Key Executive Compensation Considerations for Swiss Public Issuers

- 2014 Swiss Ordinance Against Excessive Compensation ("Minder Initiative")
  - Ordinance based on Swiss Constitution; intended to be made part of formal Swiss legislation
  - Applicable to board of directors and the members of the executive board
  - Annual binding "say on pay" vote on executive compensation
  - Executive compensation disclosure requirements (e.g., compensation report)
  - Prohibition on sign-on and severance payments
- FINMA Circular 2010/1: Minimum standards for remuneration schemes of financial institutions
  - Applicable to all employees around the globe
  - Risk-based and sustainable approach when designing compensation programs (e.g., use of deferrals and non-cash bonuses)
  - Malus requirement (but no clawback requirements)
  - Avoidance of conflicts of interest
  - Sign-on and severance payments permitted in limited circumstances

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Current Executive Compensation Regulatory Landscape

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Overview of Current Regulatory Landscape

- Following the financial crisis, many regulations and laws and guidance were adopted relating to executive compensation, particularly in respect to the financial services industry on a global basis, including:
  - **Global: Financial Stability Board (FSB) – Represented by the United States, the United Kingdom, Switzerland, the European Union & 21 other countries**:
    - FSB is an international body that monitors and makes recommendations about the global financial system and encourages implementation of these policies across jurisdictions
      - 2009 FSB Principles for Sound Compensation Practices (Implementation Standards)
      - 2017 Supplementary Guidance to the FSB Principles and Standards on Sound Compensation Practices (in consultation)
  - **United States**:
    - Dodd-Frank Wall Street Reform and Consumer Protection Act
    - 2010 Guidance on Sound Incentive Compensation Policies (OCC, FRB, FDIC, & OTS interpretation of 2009 FSB Principles & Standards)
  - **Switzerland**:
    - FINMA Circular 2010/1: Minimum standards for remuneration schemes of financial institutions
    - 2014 Swiss Ordinance Against Excessive Compensation
  - **European Union**:
    - "Basel III" Agreement (2010)
    - Capital Requirements Directive IV (2013/36/EU) (CRD IV)
    - Capital Requirements Regulation (EU)(575/2013)(CRR)
    - European Banking Authority Guidelines on Sound Remuneration Policies
    - UK's and other member states' various implementations of the above directives and requirements

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General Regulatory Provisions

- Principles on sound risk culture to prevent inappropriate risk taking
- Restrictions on guarantees
- Requirements for variable pay:
  - Bonus cap
  - Minimum deferral periods
  - Minimum non-cash component
  - Malus
  - Clawback
- Restrictions on buy-outs—discourages the "rolling bad apple"
- Restrictions on severance payments
- Enhanced regulatory supervision

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Implementation of Regulatory Requirements

- Identification of regulated employee population (e.g., PRA Code Staff)
- Application of malus and clawback
  - Recent survey found that 90% of banks have a malus policy in place*
- Holding/blocking period requirements
- Bonus cap and use of fixed allowances

*Mercer's Global Financial Services Executive Compensation Snapshot Survey (July 2016)

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Status of Dodd-Frank and Other New and Proposed Legislation

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Dodd-Frank Status

- Dodd-Frank contains various provisions dealing with executive compensation and corporate governance
- Provisions include:
  - Compensation committee and advisor independence (§ 952)—**Final**
  - Clawback requirement (§ 954)—**Proposed**
  - "Say on pay," "say on golden parachutes," "say on frequency" (§ 951)—**Final**
  - Enhanced executive compensation disclosure (§ 953, § 955):
    - Pay Ratio—**Final (almost)**
    - Pay vs. Performance—**Proposed**
    - Hedging—**Proposed**
  - Incentive-based compensation for financial institutions (§ 956)—**Proposed**
- Recent attempts to curtail Dodd-Frank provisions (e.g., Financial CHOICE Act)

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New and Proposed Legislation: Tax Reform

- Current status of tax reform
- Potential impact on employers and employees?
- Possible effect on executive compensation arrangements?

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New and Proposed Legislation: Pay Equity Laws

- Equal Pay: Many states, including New York and California, have passed laws strengthening existing pay equity and equal pay laws
  - New York's Achieve Pay Equity Act
  - California Fair Pay Act
- Pay Inquiry: Certain states and local jurisdictions have passed or proposed legislation that prohibits employers from inquiring about an applicant's salary history during the hiring process
  - Laws in effect: California, Philadelphia, and Puerto Rico
  - Laws passed: Delaware, Massachusetts, New York City (eff. October 31, 2017), and Oregon
  - Laws pending: San Francisco, Illinois, and New Jersey
- Pay Ratio Taxes: Certain states and local jurisdictions have passed or proposed legislation for additional taxes/denial of tax credits (or similar concepts) based on exceeding a certain CEO Pay Ratio (e.g., 250:1)
  - Portland, Oregon, passed legislation to impose 25% surtax
  - Similar proposals did not pass this legislative season in CA, CT, HI, IL, MN, NY & RI
- New Gender Pay Reporting:
  - UK's Gender Pay Gap Law (annual public disclosure of pay difference between men and women)
  - Expanded U.S. EEO-1 Reporting (non-public reporting of race/gender headcount by job category expanded to include aggregate pay data and hours worked)
    - U.S. EEOC approved indefinite stay of expanded EEO-1 reporting

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